IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1701 of 1988
To
FIRST APPEAL No. 1706 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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SHIVLAL JERAMBHAI - Appellant(s)
Versus
LAKHABHAI VALJIBHAI & 2 - Defendant(s)

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Appearance :
MR PV NANAVATI for Appellant(s) : 1,
MR MB GANDHI None for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 19/07/2006

ORAL JUDGMENT

1.0 By way of these appeals, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal (Main), Ahemdabad (Rural) dated 14th July, 1988 passed in various M.A.C. Petitions.

2.0 This group of appeals arise out of an accident caused by a truck driven by one

opponent-driver and owned by the appellant. Therefore, the heirs and legal representatives of the deceased and injured persons filed various petitions claiming compensation.

2.1 In the said petitions, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in these appeals.

3.0 Heard learned Counsel for the parties. On perusal of the documents placed on record it transpires that the opponent-driver in his written statement filed before the Tribunal has admitted that on the date of the alleged incident, when he all of a sudden saw a mob coming towards his vehicle, he tried to apply the brakes. However, he could not control the vehicle in question and it turned turtle. It may be noted that the opponent-driver did not appear before the Tribunal to substantiate his story.

3.1 On the other hand, an eye-witness- one Lakhabhai at Exhibit-38 has narrated altogether a different story. He has stated that on the date of accident, when he and other victims were walking on the extreme right hand side of the road, the vehicle in question came from behind and dashed them.

3.2 On the contrary, on perusal of the document produced at Exh.74 it clearly transpires that the deceased as well as other injured persons were traveling in the goods vehicle in question at the relevant point of time. The said fact is also clear from the document produced at Exh.75 i.e. Accident Survey Report. In above view of the matter, it would be relevant to refer to a decision of the Apex Court in the case of ***"Mallawwa and Others Vs. Oriental Insurance Co. Ltd. And Others"*** reported in 1999 ACJ 1 wherein the Apex Court has observed as under,

> **"22.** Thus, to find out whether an insurer would be liable to indemnify an owner of a goods vehicle in a case of the present nature, the mere fact that the passenger was carried for hire or reward would not be enough; it shall have to be found out as to whether he was the owner of the goods, or an employee of such an owner, and then whether there were more than six persons in all in the goods vehicle and whether the goods vehicle was being habitually used to carry passengers. The position would thus become very uncertain and would vary from case to case. Production of such result would not be conducive to the advancement of the object sought to be achieved by requiring a compulsory insurance policy.
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> ...The same is what finds place in sub-section (2) of section 95. that sub-section specifies the limits of liability and clause (a) deals with goods vehicle; and in so far as the person traveling in goods vehicle is concerned, it has confined the liability to the employees only. This is an indicator, and almost a sure indicator, of the fact that legislature did not have in mind carrying of either the hirer of the vehicle or his employee in the goods vehicle, otherwise, clause(a) would have provided a limit of liability regarding such persons also."

3.3 Therefore, the Tribunal is justified in holding that since the victims were traveling in the goods vehicle as gratuitous passengers,

Insurance Company shall not be liable to satisfy the claim, and the appellant-owner and opponent-driver only are liable to satisfy the claim.

3.4 In above view of the matter, I am in complete agreement with the reasoning given and findings arrived at by the Tribunal, and therefore, find no reason to interfere in this appeal.

4.0 In the result, these appeals stand dismissed. The cross-objections are allowed to the aforesaid extent. No order as to costs.

(K.S. Jhaveri,J.)

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